

Office of the Secretary of Defense

§ 299.2

Office of Information and Public Affairs, 1340 Braddock Place, Alexandria, Virginia 22314-1651. All other transactions will be conducted by mail.

(i) *Appeal of denial of DIS records and information.* (1) All appeals will be submitted in writing and reach the following appellate authority no later than 60 days after the date of the initial denial letter: Director, Defense Investigative Service (V0000), 1340 Braddock Place, Alexandria, Virginia 22314-1651.

(2) All appeals will contain at least the same identification of the records requested as the original request, and a copy of the letter denying the request, if available. Requesters will be given appeal rights when a search has been conducted and no records are located.

(3) All appeals will be reviewed by the Director, DIS, or the Special Assistant to the Director, DIS. Responses to appeals normally shall be made within 20 working days after receipt, unless an extension is required and the appellant is notified. When a request is approved on appeal, the procedures set forth in paragraph (f) of this section will be followed.

§ 298.5 Information requirements.

The DIS Office of Information and Public Affairs is responsible for preparation of the annual "Freedom of Information Act Report." This report has been assigned control symbol PA (TRA&AN) 1365. No forms or publications are required by this part.

PART 299—NATIONAL SECURITY AGENCY/CENTRAL SECURITY SERVICE (NSA/CSS) FREEDOM OF INFORMATION ACT PROGRAM

Sec.

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AUTHORITY: 5 U.S.C. 552.

SOURCE: 68 FR 28132, May 23, 2003, unless otherwise noted.

§ 299.1 Purpose.

(a) This part implements 5 U.S.C. 552, as amended, and DoD 5400.7-R,¹ assigns responsibility for responding to written requests made pursuant to 5 U.S.C. 552; and provides for the review required to determine the appropriateness of classification pursuant to DoD 5200.1-R.²

(b) This part applies to all NSA/CSS elements, field activities and personnel, and governs the release or denial of any information under the terms of the Freedom of Information Act (FOIA).

§ 299.2 Definitions.

Terms used in this part, with the exception of the terms in § 299.4, are defined in DoD 5400.7-R. For ease of reference, however, some terms are defined in this section.

(a) *FOIA request.* (1) A written request for NSA/CSS records, that reasonably describes the records sought, made by any person, including a member of the public (U.S. or foreign citizen/entity), an organization or a business, but not including a Federal Agency or a fugitive from the law that either explicitly or implicitly invokes 5 U.S.C. 552, as amended, 5 U.S.C. 552a, as amended, DoD 5400.7-R, or NSA/CSS Freedom of Information Act Program, within the National Security Agency/Central Security Service. Requesters should also indicate a willingness to pay fees associated with the processing of their request or, in the alternative, why a waiver of fee may be appropriate.

(2) An FOIA request may be submitted by U.S. mail or its equivalent, by facsimile or electronically through the NSA FOIA Home Page on the Internet. The mailing address is FOIA/PA Services (DC321), National Security Agency, 9800 Savage Road STE 6248, Ft. George G. Meade, MD 20755-6248. The Web-based system contains a form to be completed by the requester, requiring name and postal mailing address. The URL is <http://www.nsa.gov/docs/efoia/>.

¹Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

²See footnote 1 to this section.

(3) When a request meeting the requirements stated in this section is received by the FOIA office and there is no remaining question about fees, that request is considered perfected.

(b) *Privacy Act (PA) request.* A written request submitted by a U.S. citizen or an alien admitted for permanent residence for access to or amendment of records on himself/herself which are contained in a PA system of records. For purposes of this part, PA request refers to a request for copies of records. Regardless of whether the requester cites the FOIA, PA or neither law, the request will be processed under both this part and NSA/CSS Regulation 10–35, Implementation of the Privacy Act of 1974.³

(c) *Agency records.* (1) The products of data compilation, such as all books, papers, maps, and photographs, machine readable materials, including those in electronic form or format (including e-mails), or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and in NSA/CSS's possession and control at the time the FOIA request is made. The term "records" does not include:

(i) Objects or articles such as structures, furniture, vehicles and equipment, whatever their historical value or value as evidence;

(ii) Intangible records such as an individual's memory or oral communication; and

(iii) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use.

(2) A record must exist and be in the possession and control of the NSA/CSS at the time of the request to be subject to this part. There is no obligation to create or compile a record or obtain a record not in the possession of the NSA/CSS to satisfy an FOIA request.

³Copies may be obtained through a FOIA request to the National Security Agency, Ft. George G. Meade, MD 20755–6248.

The NSA/CSS may compile or create a new record when doing so would be less burdensome to the Agency than providing existing records and the requester does not object.

(3) Hard copy or electronic records that are subject to FOIA requests under 5 U.S.C. 552(a)(3) and are available through an established distribution system on the Internet, normally need not be processed under the FOIA. The Agency shall provide guidance to the requester on how to obtain the material outside of the FOIA process. If the requester insists that the request be processed under the FOIA, then it shall be so processed.

§ 299.3 Policy.

(a) Pursuant to written requests submitted in accordance with the FOIA, the NSA/CSS shall make records available to the public consistent with the Act and the need to protect government interests pursuant to subsection (b) of the Act. Oral requests for information shall not be accepted. Before the Agency responds to a request, the request must comply with the provisions of this part. In order that members of the public have timely access to unclassified information regarding NSA activities, requests for information that would not be withheld if requested under the FOIA or the Privacy Act (PA) may be honored through appropriate means without requiring the requester to invoke the FOIA or the PA. Although a record may require minimal redaction before its release, this fact alone shall not require the Agency to direct the requester to submit a formal FOIA or PA request for the record.

(b) Requests for electronic records shall be processed, and the records retrieved whenever retrieval can be achieved through reasonable efforts (in terms of both time and manpower) and these efforts would not significantly interfere with the operation of an automated information system. Reasonable efforts shall be undertaken to maintain records in forms of formats that render electronic records readily reproducible.

(c) The NSA/CSS does not originate final orders, opinions, statements of policy, interpretations, staff manuals, or instructions that affect members of